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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,516	10/10/2006	Bodo W. Lambertz	DD-25009	5094
2387	7590	09/26/2007		
OLSON & HIERL, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606			EXAMINER SOLD, JENA A	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 09/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,516

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Jena A. Sold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 7/18/07, wherein claims 1, 3-8, 10-15, and 17-19 have been amended, and claims 2, 9, 16 and 20 have been canceled, is acknowledged.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to provide antecedent basis for the limitation "the spacer cushion pads are constructed and arranged to stand out distinctly relative to the transition piece".

3. Claims 3, 4, 11 and 14-17 are objected to because they are dependent on claim 2, which has been cancelled. For the purpose of further examination, the aforementioned claims will be examined as dependent on claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6, 8, 10, 11, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Etienne (U.S. 4,811,727). Etienne discloses a therapeutic support stocking, present applicant's sock, including a means of support for the Achilles tendon comprising two pads 11, 12, present applicant's two spacer cushion pads, which are bean-shaped and fill up the retro-malleolar cavity 12, 13 on either side of the body 14 of the Achilles tendon (column 4, lines 42-45). As said two pads 11, 12 are connected via sock material in the middle, said sock material anticipates applicant's transition piece inserted between the pads. Additionally, as said pads comprise a different material of a different thickness from said transition piece, said pads are constructed and arranged to stand out distinctly relative to the transition piece.

5. Regarding claims 6 and 11, Etienne additionally discloses pads 10, 11 fit closely into the anatomy of the two depressions (column 4, lines 50-51) and are, thus, adjusted to the anatomical shape of the foot in the area of the Achilles tendon.

6. Regarding claims 8 and 15, Etienne discloses chamfered heel-piece 15, present applicant's additional cushion pad.

7. Regarding claims 10 and 17, Etienne discloses ventilation and traction eyelets 17, 18, present applicant's air channel, on the top and bottom lateral parts of the leg segments 19.

8. Claims 1, 3, 6, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Haanen (DE 25 47 809). Haanen discloses an ankle protector sock for

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football players comprising cylindrical cushions 2, 3, present applicant's spacer cushion pads, which lie between the ankle bone and the Achilles tendon on both sides, as visible in Figures 3 and 4 (page 3, para. 1). Hanaan additionally discloses cushion pads 2, 3 are connected by a bridge piece, present applicant's transition piece, made of elastic material (page 3, para. 2 and 3). Especially visible in Figures 4 and 5, cushions 2, 3 are a different shape and thickness than the bridge piece and are, thus, constructed and arranged to stand out distinctly relative to said bridge piece.

9. Regarding claim 3, as visible in Figures 3 and 4, bridge piece 6 is a cushion pad having a smaller thickness than the spacer cushion pads.

10. Regarding claims 6, 11, and 12, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4-5, 7, 8, 10, 13-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haanen (DE 25 47 809) in view of Lambertz (U.S. 6286151). Haanen discloses the invention substantially as claimed and as previously discussed including a sock having cylindrical cushions on either side of the Achilles tendon, as well

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as a transition piece comprising a cushion having a smaller thickness than said cylindrical cushions. Haanen, however, fails to disclose any additional features of the sock or the padding.

12. Regarding claims 4 and 5, Haanen fails to disclose the transition or bridge cushion comprising climate-adjusting fabric. Lambertz teaches a heat-regulating sock for use during sport activities comprising, in part, a padded cushion 7 over the Achilles tendon, wherein said padded cushion comprises climate-adjusting fabric (column 2, lines 42-46). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the bridge piece of Haanen, the portion covering the Achilles tendon, from climate-adjusting fabric, as taught by Lambertz, because climate-adjusting fabric serves to air the skin and transport moisture of the sweat away (column 1, lines 43-45).

13. Regarding claims 7 and 14, Haanen discloses pads 2, 3 may comprise a plastic material, but fails to explicitly disclose said pads comprising internally hollow fibers, surrounded by wool or cotton. Lambertz discloses the sock paddings consisting of hollow-core fibers coated with threads of wool or cotton. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the pads of Haanen out of a plastic material having internally hollow fibers and surrounded by wool or cotton, because hollow-core plastic threads are particularly effective in damping shocks and pressure (column 3, lines 18-22).

14. Regarding claims 8, 15 and 19, Haanen fails to disclose the sock provided with additional cushion pads. Lambertz discloses padded instep cushion 5 and padded shin

cushion 6 (column 2, lines 34-38). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with additional padded cushions, as taught by Lambertz, because the additional cushioning protects the shin area during sport activities and reduces stresses and pressure points on the foot (column 1, lines 40-42).

15. Regarding claim 13, as previously discussed, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1), thus adjusted to the anatomical shape of the foot in the area of the Achilles tendon.

16. Regarding claims 17-18, Haanen additionally fails to disclose said sports sock having an air channel. Lambertz teaches said heat-regulating sock for use during sport activities comprising at least 1 integrated airway 3 extending from the sole 2 to the top of the sock, wherein the airway 3 consists of climate-regulating netted fabric (Abstract). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with climate-regulating netted fabric forming an air channel in said sock, as taught by Lambertz, because through said air channel, moisture is drawn upward from the area of the sole of the foot, thus cooling the foot and keeping the foot dry (column 2, lines 30-31).

Response to Arguments

17. Applicant's arguments filed 7/18/07 have been fully considered but they are not persuasive. Regarding the Etienne rejection, applicant argues that pads 10, 11 are intended to fill the depression beside the Achilles tendon, while the two spacer cushion pads 24, 25 of the present invention stand out distinctly relative to the transition piece and the Achilles tendon. Firstly, the limitation "the spacer cushion pads are constructed and arranged to stand out distinctly relative to the transition piece" is unclear and fails to impart additional structure to the cushions or the transition piece. As the pads of Etienne differ in both shape and material, they are clearly distinct from the transition piece of sock material therebetween and, thus, they "stand out." It is further unclear how applicant's spacer cushions stand out from the transition piece, other than in terms of thickness as claimed in claim 3. Etienne's pads 10, 11 also "stand out distinctly" in terms of thickness, as they are intended to fill up the retro-malleolar cavity 12, 13 on either side of the body 14 of the Achilles tendon (column 4, lines 42-45) and, thus, are necessarily thicker than the sock material disposed therebetween. Additionally, applicant attempts to distinguish Etienne's invention from the present invention by noting that the pads of Etienne are created to fill in the depressions beside the Achilles tendon. However, as applicant's spacer cushion pads are "adjusted to the anatomical shape of the foot in the area of the Achilles tendon," applicant's spacer cushions are presumably shaped to, at least, mimic the depressions beside the Achilles tendon.
18. Similarly, with regard to Haanen, applicant argues that cushions 2, 3 of protector 1 are created to fill the depressions beside the Achilles tendon and do not stand out with

respect to the outer side of the sock. Firstly, applicant fails to claim anything regarding the outer side of the sock, nor is it apparent why pads standing out (presumably in terms of thickness) on the outer side of the sock would be beneficial to the wearer or represent a critical feature of the invention. In fact, as applicant claims the spacer cushion pads "adjusted to the anatomical shape of the foot in the area of the Achilles tendon," said pads are not provided any structure in terms of their outward shape and appearance, as conforming to the shape of the foot only defines, if anything, the shape of the pads within the sock. Again, as discussed with regard to Etienne, cushions 2, 3 of Etienne clearly "stand out distinctly" relative to the transition piece in terms of shape and thickness, as visible in Figures 4 and 5.

Conclusion

19. Additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent Number 5,830,237 to Kania is particularly relevant to applicant's invention.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jena A. Sold whose telephone number is (571) 272-8610. The examiner can normally be reached on Mon. - Fri. 9:00 A.M. to 5:00 P.M..

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765